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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
MM Docket No. 92-266

In the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992

Rate Regulation

INFORMAL REPLY COMMENTS
OF WAREHOUSE GROUP, INC.

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March 22, 1993

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OF WAREHOUSE GROUP, INC.

Warehouse Group, Inc. ("Warehouse Group") hereby submits these informal reply comments regarding regulation of leased access channels, pursuant to Section 612 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), codified at scattered sections of 47 U.S.C. Warehouse Group has reviewed the comments and reply comments in this docket, and believes that the interests of commercial users of leased access channels have not been sufficiently addressed.

Warehouse Group is a private consortium that intends to lease cable channel capacity on a regional basis. It plans to lease a single, dedicated channel fourteen hours a day to provide advertising supported, community-oriented programming. The programming will be aimed at local community interests, and will be supported by advertising that is directly related to Warehouse Group's business ventures in the community. Warehouse Group is concerned that cable systems within a metropolitan region will not agree to provide channel capacity at reasonable rates and

upon reasonable terms and conditions, as the Act requires.

Section 612(c)(4)(B).

Congress intended that leased access channels be used to promote competition to services offered by cable operators and to create diversity in programming available to cable subscribers.

Section 612(a). Warehouse Group believes new and different

the operations of the leased channel programmer. Cable operators should not be allowed to otherwise rely on this provision to restrict use of leased access channels. The FCC should prohibit operators from imposing conditions that would not exist in a competitive environment.

The FCC rules should emphasize that Section 612(c)(1) does not permit operators to require leased access programmers to compensate operators for their alleged lost profits caused by competition from the leased channel. Such an interpretation would defeat the purpose of leased channels as a source of competition to operators.

Rates must be reasonable and set at levels that would exist if channel lessees had competitive alternatives to the cable system to reach subscribers. Normally, a reasonable rate will reflect the marginal costs to the operator of providing channel capacity. This will also ensure that operators are not subsidizing costs of leased access. Basing rates on "implicit" leasing charges to programmers, as cable operators urge, gives operators unchecked discretion to set leased rates without regard to the cost of providing the channel.¹ Similarly, basing rates on a percentage of sales is not an option for many leased access users, where the programmer's revenues are not generated directly by subscriber payments. Rates based on the cable operator's

¹The "implicit" rates defined by cable operators in the comments and reply comments filed in this docket reflect monopsony rather than competitive prices. Competition cannot develop where rates are based on anticompetitive pricing schemes.

marginal costs opens up leased access to the widest range of users, without undue hardship to cable operators.

Warehouse Group recognizes that federal regulation of leased access channels is untested, and that many of the issues involved are not yet defined. It is appropriate for the FCC to avoid overly specific regulations on April 3. But the FCC should promulgate general guidelines that will allow dispute resolution on a case-by-case basis. The FCC should set the general standards that will encourage operators and programmers to negotiate use of channels in a straightforward, efficient manner. The rules should define the FCC's goals, and encourage the parties to resolve disputes through alternative dispute resolution. The FCC need only take an active role in adjudicating disagreements that cannot be settled through negotiation.

The FCC should act to make leased access channels available as a viable means of providing competitive programming. It

programmers seeking the use of leased access and the purposes of Congress will be frustrated.

Respectfully submitted,



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Dated: March 22, 1993

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